

## Reminder! Changes to Investment disclosure and governance

Alert | 05 June 2020



### Introduction

Trustees of occupational pension schemes should be preparing for a second raft of changes to their statements of investment principles (“SIPs”) and the introduction of implementation statements. They must also ensure that they are complying with obligations in relation to the fiduciary management (“FM”) and investment consultancy (“IC”) services they receive.

### Key points

- Before 1 October 2020, SIPs must be expanded to address stewardship in more detail, and to set out the trustees’ policy in relation to their arrangements with their asset managers.
- DB schemes must publish their SIP online by 1 October 2020. DC schemes have been required to publish their SIP (and to inform members of its availability in their annual benefit statement) since 1 October 2019.
- All annual reports produced on or after 1 October 2020 must include an “implementation statement”, the contents of which varies for DB and DC schemes (details are below).
- Implementation statements must be published online. There is an ultimate deadline of 1 October 2021 for publication of the first DB implementation statement and aspects of DC implementation statements.
- DWP regulations designed to integrate the requirements of [the CMA Order on trustees’ duties in respect of FM and IC services](#) (“the Order”) into pensions law are on hold, with no revised date for their publication or implementation. Until they come into force, trustees must comply with the Order.

### New SIP requirements

Trustees have had to deal with a raft of changes to their SIPs over the last few years. The first set were introduced in September 2018, and had to be in place by 1 October 2019 (see our [Alert](#) for details).

Further regulations issued in 2019 (see our [Alert](#) for details) require SIPs to include the following by 1 October 2020:

- additional information on the trustees’ stewardship policy. For example, how they monitor the investee

company on capital structure, and how they manage actual and potential conflicts of interest in relation to their engagement

- the trustees' policy in relation to their arrangements with their asset managers. This policy must address the following matters, or explain why they have not been included:
  - how the arrangement with the asset manager incentivises the asset manager to align its investment strategy and decisions with the trustees' investment policies
  - how that arrangement incentivises the asset manager to make decisions based on assessments about medium to long-term financial and non-financial performance of an issuer of debt or equity, and to engage with issuers of debt or equity in order to improve their performance in the medium to long-term
  - how the method (and time horizon) of the evaluation of the asset manager's performance, and the remuneration for asset management services, are in line with the trustees' investment policies
  - how the trustees monitor "portfolio turnover costs" incurred by the asset manager, and how they define and monitor targeted portfolio turnover or turnover range
  - the duration of the arrangement with the asset manager.

For the purposes of this requirement:

- "portfolio turnover costs" means the costs incurred as a result of the buying, selling, lending or borrowing of investments
- "targeted portfolio turnover" means the frequency within which the assets of the scheme are expected to be bought or sold
- "turnover range" means the minimum and maximum frequency within which the assets of the scheme are expected to be bought or sold.

## Implementation statements – timing and contents

All schemes must prepare an annual report and accounts within seven months of the end of each "scheme year". Any annual report produced on or after 1 October 2020 must contain an implementation statement.

### DB schemes

For schemes which provide DB benefits, the statement must:

- set out how, and the extent to which, the scheme's policies on stewardship have been followed during the scheme year
- describe the voting behaviour by, or on behalf of, the trustees (including the most significant votes cast by the trustees or on their behalf) during the scheme year, stating any use of the services of a proxy voter

### DC / hybrid schemes

For schemes which provide DC benefits (other than DB schemes providing only DC AVCs), the statement must:

- set out how, and the extent to which, the SIP has been followed during the scheme year
- describe any formal review of the SIP (as required by the Occupational Pension Schemes (Investment) Regulations 2005) undertaken during the year, and any other review of how the SIP has been met

- explain any change made to the SIP during the scheme year and the reason for the change
- where no formal review was undertaken during the scheme year, provide the date of the last review
- describe the voting behaviour by, or on behalf of, the trustees (including the most significant votes cast by the trustees or on their behalf) during the year, stating any use of the services of a proxy voter during that year.

[DWP guidance](#) makes clear that schemes need only address the policies to the extent they have been in place during the relevant scheme year. So, where the SIP has been updated during the course of the year, any new policies would only need to be reported on in relation to the part of the scheme year after they were adopted. Care will be needed to ensure that trustees are reporting against the right policies at the right times.

We recommend trustees keep contemporaneous notes, particularly on engagement activities and voting, and that they ensure their managers provide the necessary information during the year to avoid an unseemly scramble as deadlines approach.

## Implementation statements – online publication

While it is not entirely clear from the legislation, in our view (which is supported by the [DWP guidance](#)) the statement should be published as soon as the scheme's report and accounts are final. However, trustees should note that there is an ultimate deadline of 1 October 2021 for the publication of the first DB implementation statement and, for DC schemes, for the publication of the first year's information in relation to aspects of the scheme's stewardship policies.

Schemes whose next annual report is finalised on or before 30 September 2020 (and therefore is not required to include an implementation statement) should note that they will need to produce their next annual report (for 2020/21), or at least the relevant part of it, in time for the 1 October 2021 publication deadline.

## Implementation statements - guidance

[TPR's DC investment guidance](#) explains that the "purpose of the [statement] is to help ensure that 'action follows intent' as far as possible". The process of having to consider the content of the statement is intended to help to "focus trustees' minds on how well their investment policies and stewardship arrangements are delivering against their scheme's agreed investment principles". Stressing that trustees should not simply produce a "tick-box" report, TPR suggests the statement might include detail on the following:

- how the trustees developed their policies on voting and engagement, including the relevance of investment beliefs underpinning those policies and their investment time horizons
- the time and resource dedicated to the process, including details of any relevant sub-committees and advice taken
- how those policies have been implemented in practice. For example, actions taken with investor coalitions (such as, on climate change, the Institutional Investors' Group on Climate Change, or the CA100+), including leadership roles as part of any such coalitions. Also, whether there has been a review of investment manager mandates, perhaps resulting in a decision to replace an existing manager with one whose engagement policies are in line with those of the scheme
- public policy work undertaken

- lessons learned in engaging with specific assets on specific issues, and
- the relative effectiveness of these actions in achieving their aims.

As TPR's [DB investment guidance](#) has not yet been updated to cover the introduction of the implementation statement, the above is also useful for the trustees of DB schemes.

On 13 May 2020, the PLSA [announced](#) the launch of a new industry group which is tasked with supporting schemes in getting to grips with their new 2020 ESG duties, including the requirement for publication of an implementation statement. The group, which includes Sackers' partner [Stuart O'Brien](#), is aiming to produce practical guidance for schemes "in time for summer trustee meetings".

## Investment governance

### The Order

Following its investigation into the investment consultants market, the CMA published the Order which introduced new duties for trustees.

The Order came into effect on 10 December 2019. Since then trustees:

- who wish to delegate investment decisions for 20% or more of their scheme assets must run a competitive tender when first purchasing FM services
- who have already appointed a fiduciary manager (or managers) for 20% or more of their scheme assets without a tender, must put the service out to tender within five years of the appointment. If the five-year period had already expired, or would do so by 9 June 2021, the tender must instead be run before the end of that period
- must not enter into a contract with an IC, or continue to obtain IC services from an IC, unless they have set the IC strategic objectives.

### DWP regulations

On 29 July 2019, the DWP issued a [consultation](#) on draft regulations which were designed to integrate the Order into pensions law and to transfer responsibility for enforcement from the CMA to TPR.

The regulations were due to come into force on 6 April 2020, but their publication has been paused (along with all consultations, consultation responses and associated legislation) due to Covid-19. Until they come into force the Order continues to apply, meaning trustees should report any non-compliance to the CMA.

Should the regulations not come into force this year (and transfer reporting of compliance to TPR via the scheme return), trustees will be required to send a compliance statement to the CMA by 7 January 2021. Information on the process and timing for submitting compliance statements is available on the [CMA's website](#). We are monitoring developments here so watch this space.

## Action

Trustees should ensure they:

- start preparing for the changes to their SIPs sooner rather than later
- are collating the information they need to draft their implementation statement.

If you have any questions, or would like further information, please speak to your usual Sackers contact.

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